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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

SPS TECHNOLOGIES, LLC d/b/a/  
PB FASTENERS,

Plaintiff,

v.

BRILES AEROSPACE, INC.,  
MICHAEL BRILES, and ROBERT  
BRILES,

Defendants.

Case No. 2:18-cv-09536-MWF-AS

**PLAINTIFF SPS  
TECHNOLOGIES, LLC'S  
NOTICE OF MOTION AND  
MOTION TO MODIFY  
SCHEDULING ORDER AND FOR  
LEAVE TO FILE SECOND  
AMENDED COMPLAINT, AND  
MEMORANDUM OF POINTS  
AND AUTHORITIES.**

**REDACTED VERSION OF  
DOCUMENT PROPOSED TO BE  
FILED UNDER SEAL**

**First Amended Complaint Filed:**  
December 17, 2018

**Hearing:**

**Date: August 12, 2019**

**Time: 10:00 a.m.**

**Place: Courtroom 5A**

**Before: Hon. Michael W. Fitzgerald**

PLEASE TAKE NOTICE that on August 12, 2019 at 10:00 a.m., or as soon as the matter may be heard, in the courtroom of the Honorable Michael W. Fitzgerald at the United States District Court for the Central District of California, 350 W. First Street, Los Angeles, California, Plaintiff SPS Technologies, LLC d/b/a PB Fasteners (“PB Fasteners” or “Plaintiff”) will and hereby does move the Court pursuant to Federal Rules of Civil Procedure 15(a) and 16(b) and Local Rules 15-1 and 15-3 for an order (1) modifying the scheduling order to allow for amendment of the First Amended Complaint and (2) granting leave to file the Second Amended Complaint.

This Motion is based on this notice of motion and supporting memorandum of points of authorities, the proposed Second Amended Complaint (attached hereto as Exhibit 1), the Declaration of Joseph Wood (and Exhibits 2–19 attached thereto), the Declaration of Scott Cooper, the Declaration of Joshua Crowe, and other written or oral argument that Plaintiff may present to the Court. A proposed order is filed herewith.

#### **Local Rule 7-3 Certification**

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on July 8 and July 9, 2019.

Dated: July 15, 2019

*/s/ Matthew Donald Umhofer*  
**SPERTUS, LANDES & UMHOFFER, LLP**  
 Matthew Donald Umhofer (SBN 206607)

*Attorney for SPS Technologies, LLC*

**TABLE OF CONTENTS**

**MEMORANDUM OF POINTS AND AUTHORITIES ..... 1**

**I. GOOD CAUSE EXISTS TO MODIFY THE SCHEDULING ORDER TO  
ALLOW AMENDMENT..... 4**

**II. LEAVE TO AMEND SHOULD BE GRANTED UNDER RULE 15..... 14**

**A. Leave Should Be Granted to Assert Claims for Trade Secret  
Misappropriation Against Space-Lok, Montgomery Machine, and  
Lisi Aerospace (SAC Causes of Action Nos. 14–19). ..... 14**

**B. Leave Should be Granted to Assert a Claim for Breach of Contract  
Against Robert Briles (SAC Cause of Action No. 11). ..... 19**

**C. Leave Should be Granted to Assert Claims for Intentional  
Misrepresentation and Concealment Against Robert Briles (as an  
individual and as a trustee) and Richard Briles (as an individual and  
as a trustee) (SAC Causes of Action Nos. 11–12)..... 22**

**CONCLUSION ..... 25**

## TABLE OF AUTHORITIES

### CASES

|   |             |
|---|-------------|
| <i>Acad. of Country Music v. ACM Records, Inc.</i> , No. 13-cv-02448-DDP,<br>2014 WL 2586859 (C.D. Cal. June 10, 2014).....           | 5           |
| <i>Adobe Sys. Inc. v. Chukoula LLC</i> , No. 17-cv-1808-MWF, 2017 WL<br>10338210 (C.D. Cal. Sept. 12, 2017) .....                     | 4, 7, 8, 14 |
| <i>Anderson v. City of Rialto</i> , 2017 WL 10562684 (C.D. Cal. March 2,<br>2017) .....   | 17, 18      |
| <i>Cole v. CRST, Inc.</i> , 317 F.R.D. 141 (C.D. Cal. 2016) .....   | 19, 25      |
| <i>Coleman v. Quaker Oats Co.</i> , 232 F.3d 1271 (9th Cir. 2000).....  | 4           |
| <i>DCD Programs, LTd. v. Leighton</i> , 833 F.2d 183 (9th Cir. 1987) .....  | passim      |
| <i>Eichler v. Tilton</i> , 2008 WL 109340 (E.D. Cal. Jan. 8, 2008), <i>aff'd</i> , 2008<br>WL 3889738 (E.D. Cal. Aug. 20, 2008) ..... | 18          |
| <i>Eminence Capital, LLC v. Aspeon, Inc.</i> , 316 F.3d 1048 (9th Cir. 2003) .....  | 14          |
| <i>Erhart v. Bofl Holding, Inc.</i> , 2017 WL 588390 (S.D. Cal. February 14,<br>2017) .....   | 21          |
| <i>Fields v. QSP, Inc.</i> , 2012 WL 2049528 (C.D. Cal. June 4, 2012).....  | 22          |
| <i>Fru-Con Const. Corp. v. Sacramento Mun. Utility Dist.</i> , 2006 WL<br>3733815 (E.D. Cal. Dec. 15, 2006) .....                     | 17, 18      |
| <i>Genentech, Inc. v. Abbott Laboratories</i> , 127 F.R.D. 529 (N.D. Cal. 1989).....  | 18          |
| <i>Golden v. California Emergency Physicians Med. Grp.</i> , 782 F.3d 1083<br>1091 (9th Cir. 2015) .....                              | 22          |
| <i>Golden v. California Emergency Physicians Med. Grp.</i> , 896 F.3d 1018<br>(9th Cir. 2018) .....                                   | 21          |
| <i>Griggs v. Pace Am. Grp., Inc.</i> , 170 F.3d 877 (9th Cir. 1999) .....   | 14, 15, 20  |
| <i>Howey v. United States</i> , 481 F.2d 1187 (9th Cir. 1973).....  | 15, 22      |

|    |   |            |
|----|---|------------|
| 1  | <i>Hurn v. Retirement Fund Trust of Plumbing</i> , 648 F.2d 1252 (9th               |            |
| 2  | Cir.1981) .....   | 20         |
| 3  | <i>Kearns v. Ford Motor Co.</i> , 567 F.3d 1120 (9th Cir. 2009) .....               | 24         |
| 4  | <i>Kline v. Turner</i> , 105 Cal. Rptr. 2d 699 (Cal. Ct. App. 2001) .....           | 24         |
| 5  | <i>Moore v. Kayport Package Express</i> , 885 F.2d 531 (9th Cir.1989) .....         | 21         |
| 6  | <i>Moran v. Bromma</i> , 2013 WL 4780772 (E.D. Cal. Sept. 5, 2013) .....            | 24         |
| 7  | <i>Morongo Band of Mission Indians v. Rose</i> , 893 F.2d 1074 (9th Cir.1990) ..... | 16         |
| 8  | <i>Munchkin, Inc. v. Luv N' Care Ltd.</i> , 2014 WL 12560778 (C.D. Cal. Oct.        |            |
| 9  | 1, 2014) .....  | passim     |
| 10 | <i>ReadyLink Healthcare v. Cotton</i> , 126 Cal. App. 4th 1006, 24 Cal. Rptr.       |            |
| 11 | 3d 720 (2005) .....   | 21, 22     |
| 12 | <i>SAES Getters S.p.A. v. Aeronex, Inc.</i> , 219 F. Supp. 2d 1081 (S.D. Cal.       |            |
| 13 | 2002) .....   | passim     |
| 14 | <i>Swafford v. Int'l Bus. Machines Corp.</i> , 2019 WL 1676213 (N.D. Cal.           |            |
| 15 | Apr. 17, 2019) .....  | 24, 25     |
| 16 | <i>Talwar v. Creative Labs, Inc.</i> , 2007 WL 1723609 (C.D. Cal. June 14,          |            |
| 17 | 2007) .....   | 17, 18, 24 |
| 18 | <i>United States v. United Healthcare Ins. Co.</i> , 848 F.3d 1161 (9th Cir.        |            |
| 19 | 2016) .....   | 15         |
| 20 | <i>Universal City Studios Prods. LLLP v. TickBox TV LLC</i> , No. 17-cv-7496-       |            |
| 21 | MWF, 2018 WL 5276298 (C.D. Cal. July 3, 2018) .....                                 | 4, 7, 10   |

## STATUTES

|    |                                     |        |
|----|-------------------------------------|--------|
| 23 | Bus. & Prof. Code § 16600 .....     | 21, 22 |
| 24 | Cal. Civ. Proc. Code § 338(d) ..... | 24     |

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            This case arises from the misappropriation of trade secrets that belong to Plaintiff  
3 SPS Technologies, LLC d/b/a PB Fasteners (“Plaintiff” or “PB Fasteners”) related to  
4 the SLEEVbolt®.<sup>1</sup> Plaintiff first learned that its trade secrets had been misappropriated  
5 in late September 2018 after The Boeing Company (“Boeing”) announced that it had  
6 qualified two new manufacturers to make Plaintiff’s product. At that time, Plaintiff was  
7 unaware of the extent of the misappropriation. Based on the available facts, Plaintiff  
8 filed this lawsuit against one of the new manufacturers, Defendant Briles Aerospace,  
9 Inc. (Dkt. 1.) Plaintiff filed a second lawsuit in Canada on November 20 against what  
10 was then understood to be the only other manufacturer, Lisi Aerospace Canada Corp.

11            In the instant case, Plaintiff requested an accelerated schedule in the hopes of  
12 stopping the misappropriation of its trade secrets at an early date. Plaintiff requested a  
13 trial date in October, and Defendants requested a trial date in December. Under the  
14 scheduling order issued by the Court, (Dkt. 118), discovery commenced in March 2019,  
15 the fact discovery cut-off was set for June 28, and the trial date was set for October 29.  
16 Plaintiff worked diligently to meet the Court’s deadlines, provide discovery, and  
17 accommodate Defendants’ evolving discovery demands. These efforts included the  
18 collection of more than 1.5 million documents, the review of approximately 200,000  
19 documents, and the production of 33,799 documents. In addition, Plaintiff agreed to  
20 make its witnesses available for depositions starting June 12, and, when Defendants  
21 requested additional time with Plaintiff’s documents, Plaintiff agreed to make its  
22 witnesses available after the June 28 cut-off.

23            Notwithstanding Plaintiff’s diligent efforts, obtaining discovery from Defendants  
24 and third parties has at times been difficult and hard-fought. Based on recently obtained  
25 evidence, it is now apparent that amendment of the First Amended Complaint (“FAC”)  
26 is necessary for four reasons. First, documents produced by Space-Lok, Inc. and Boeing  
27

28            <sup>1</sup> To avoid repetition, record cites are reserved for the Argument Section below.

1 on June 11 and 12 revealed for the first time that Space-Lok and Montgomery Machine  
 2 Co., Inc. (“Montgomery Machine”) [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]. Plaintiff thus seeks leave to amend  
 5 the FAC to add trade secret claims against Space-Lok and Montgomery Machine under  
 6 the Defend Trade Secrets Act (“DTSA”) and the California Uniform Trade Secrets Act  
 7 (“CUTSA”). *See* Second Amended Complaint (“SAC”) ¶¶ 258–91. These claims are  
 8 parallel to the claims that Plaintiff has asserted against Briles Aerospace: they involve  
 9 the same SLEEVbolt® product, the same trade secret dimensions, formulae, and  
 10 processes, and many of the same documents and witnesses.

11 Second, documents first produced to Plaintiff on June 12 and 18 have provided  
 12 evidence that the necessary Lisi Aerospace entities [REDACTED]  
 13 [REDACTED].<sup>2</sup> These new documents were produced only after Plaintiff moved to  
 14 compel their production in the Northern District of Illinois. California is now the only  
 15 active forum where Plaintiff can pursue all of its trade secret claims against Lisi  
 16 Aerospace in a single action. Accordingly, Plaintiff seeks leave to amend the FAC to  
 17 add trade secret claims against Lisi Aerospace entities under the DTSA and CUTSA.  
 18 *See* SAC ¶¶ 241–57. As with the claims against Briles Aerospace, Space-Lok, and  
 19 Montgomery Machine, Plaintiff’s claims against Lisi Aerospace derive from the same  
 20 common nucleus of operative fact, are based on the same product and trade secrets, and  
 21 rely on many of the same documents and witnesses.

22 Third, on May 29, Plaintiff found a previously undiscovered Employee Patent &  
 23 Confidentiality Agreement (“Employee Agreement”) between Plaintiff and Defendant  
 24 Robert Briles. This Employee Agreement was executed in September 2011 when  
 25 Robert Briles worked for Plaintiff. Before naming Robert Briles as a defendant in the  
 26

27 <sup>2</sup> The four Lisi Aerospace entities are: (1) Lisi Aerospace Canada Corp. (“Lisi  
 28 Canada”), (2) Blanc Aero Industries SAS (“Lisi France”), (3) HI-SHEAR Corp., and  
 (4) Lisi Aerospace North America, Inc. (together with HI-SHEAR Corp., “Lisi USA”).



1 FAC, Plaintiff conducted a diligent search for any confidentiality agreements that he  
2 had executed with PB Fasteners, and was unable to locate an Employee Agreement. In  
3 response to Briles Aerospace's Second Motion to Compel (Dkt. 137), however, Plaintiff  
4 conducted a search for the personnel files of other unrelated employees among the  
5 approximately 50 boxes of hard copy personnel files (dating back decades) that Plaintiff  
6 maintains in storage at its facility. In conducting this search, Plaintiff uncovered a copy  
7 of Robert Briles's Employee Agreement, which had been misfiled in a box with the  
8 personnel files of other employees. Robert Briles did not produce a copy of the  
9 Employee Agreement until June 14. In the Employee Agreement, Robert Briles agreed,  
10 among other provisions, not to retain Plaintiff's confidential business records. In this  
11 litigation, Robert Briles has admitted that he did exactly that. (Dkt. 132 at 12–15.)  
12 Moreover, Mr. Briles has resisted producing discovery in this litigation relating to his  
13 retention of Plaintiff's documents based on the argument that a separate confidentiality  
14 agreement—which is the basis for the current claim for breach of contract against  
15 Robert Briles—does not prohibit him specifically from retaining such documents. The  
16 discovery of the Employee Agreement thus provides an additional basis to bring and  
17 resolve claims against Robert Briles relating to the same common nucleus of operative  
18 fact as existing claims. Accordingly, Plaintiff seeks leave to amend the FAC to add a  
19 claim that Robert Briles breached the Employee Agreement by retaining, using, and  
20 disclosing Plaintiff's confidential and proprietary information. *See* SAC ¶¶ 221–26.

21 Fourth, on June 28, Robert Briles served responses to Plaintiff's First  
22 Interrogatories. In those responses, Mr. Briles asserts that he purportedly has no  
23 knowledge of any confidential, proprietary, or trade secret information relating to the  
24 SLEEVbolt® that was sold to Plaintiff in connection with the Asset Purchase  
25 Agreement (“APA”) between Paul R. Briles, Inc. d/b/a PB Fasteners and Plaintiff in  
26 2011. Robert Briles's new assertions in his interrogatory responses directly contradict  
27 representations that he made during the negotiations of the APA. At the time of the  
28 APA, Robert Briles was the President of Paul R. Briles, Inc. In that position, he made



1 representations about the trade secrets transferred to Plaintiff under the APA (which  
 2 were made on behalf of the Directors and shareholders of Paul R. Briles, Inc., including  
 3 himself as an individual and trustee, and his brother, Richard Briles, as an individual  
 4 and trustee). Robert and Richard Briles, in their personal capacities and as trustees of  
 5 trusts for their benefit, received millions of dollars in connection with the APA. If the  
 6 assertions in Robert Briles's newly disclosed interrogatory responses are correct, then  
 7 he and Richard Briles intentionally misrepresented and/or concealed material facts  
 8 regarding the company's ownership of trade secrets in connection with the APA. As a  
 9 result, Plaintiff seeks leave to amend the FAC to add claims for intentional  
 10 misrepresentation and concealment against Robert Briles (as an individual and as a  
 11 trustee) and Richard Briles (as an individual and as a trustee). *See* SAC ¶¶ 227–40.

12 As set forth below, good cause exists to modify the scheduling order to allow for  
 13 amendment of the FAC, and all four factors considered in assessing a motion for leave  
 14 to amend demonstrate that the interests of justice strongly favor amendment here. *See*  
 15 Fed. R. Civ. P. 15(a) & 16(b). Accordingly, Plaintiff respectfully requests that the Court  
 16 (1) grant its Motion, (2) modify the scheduling order to allow for amendment of the  
 17 FAC, and (3) grant Plaintiff leave to file the SAC.

## 18 ARGUMENT

### 19 **I. GOOD CAUSE EXISTS TO MODIFY THE SCHEDULING ORDER TO** 20 **ALLOW AMENDMENT.**

21 Good cause is required to modify a scheduling order when a party seeks to amend  
 22 the pleadings after the deadline for amendment. *See Universal City Studios Prods.*  
 23 *LLLP v. TickBox TV LLC*, No. 17-cv-7496-MWF, 2018 WL 5276298, at \*1 (C.D. Cal.  
 24 July 3, 2018) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000)).  
 25 “The Rule 16 ‘good cause’ standard ‘primarily considers the diligence of the party  
 26 seeking the amendment.’” *Adobe Sys. Inc. v. Chukoula LLC*, No. 17-cv-1808-MWF,  
 27 2017 WL 10338210, at \*2 (C.D. Cal. Sept. 12, 2017) (quoting *Coleman*, 232 F.3d at  
 28 1294). Good cause exists where (1) a party is “diligent in assisting the court in creating

1 a workable Rule 16 order”; (2) “noncompliance with a Rule 16 deadline occurred or  
2 will occur, notwithstanding [the party’s] diligent efforts to comply, because of the  
3 development of matters which could not have been reasonably foreseen or anticipated  
4 at the time of the Rule 16 scheduling conference”; and (3) the party is “diligent in  
5 seeking amendment of the Rule 16 order, once it became apparent that [the party] could  
6 not comply with the order.” *Acad. of Country Music v. ACM Records, Inc.*, No. 13-cv-  
7 02448-DDP, 2014 WL 2586859, at \*2 (C.D. Cal. June 10, 2014). There is ample good  
8 cause under each of these factors here.

9 **First**, Plaintiff was diligent in assisting the Court in creating a workable Rule 16  
10 order. During the hearing on Plaintiff’s Motion for a Preliminary Injunction, the Court  
11 and parties discussed trial dates in October 2019, and the Court directed the parties to  
12 meet and confer regarding a case schedule. *See* Wood Decl., Ex. 2. After meeting and  
13 conferring, the parties submitted a Joint Notice of Submission of Schedule of Pretrial  
14 and Trial Dates Worksheet (the “Joint Scheduling Notice”), with Plaintiff requesting a  
15 trial date of October 1 and Defendants requesting a trial date of December 10. (Dkt.  
16 109.) Plaintiff requested this schedule—based on the information available to it at the  
17 time—in an effort to stop the harm caused by the ongoing misappropriation of its trade  
18 secrets as early as practicable. On March 19, the Court adopted an accelerated case  
19 schedule, setting the deadline to amend pleadings for April 29, the cut-off of fact  
20 discovery for June 28, and the trial date for October 29. (Dkt. 118.)

21 Before discovering that additional parties and claims were necessary to protect  
22 Plaintiff’s trade secrets and redress the harm Plaintiff is suffering, Plaintiff diligently  
23 worked to meet the Court’s deadlines. Defendants have sought broad and burdensome  
24 discovery, including over 175 document requests and over 50 interrogatories. Plaintiff  
25 did not request a single extension from Defendants in responding to these requests.  
26 Rather, Plaintiff accommodated Defendants’ evolving discovery demands through,  
27 among other efforts, the collection of thousands of hard copy documents relating to the  
28 development, protection, and manufacturing use of Plaintiff’s trade secrets; the use of

20 ESI custodians and dozens of search terms; and numerous targeted ESI collections for specific categories of documents. *See* Wood Decl., at ¶¶ 2–4. All told, Plaintiff has collected more than 1.5 million documents, has reviewed about 200,000 documents, and now has produced 33,799 documents, or 144,923 pages. *Id.* at ¶ 5. This collection and review of documents required substantial work, and Plaintiff’s document production is now complete. *Id.* at ¶ 6. In addition, Plaintiff offered to make its witnesses available for depositions starting June 12, and, when Defendants indicated that they would not proceed with any individual deposition until 7 days after all documents from that witness had been produced, Plaintiff agreed to make its witnesses available after the June 28 discovery cut-off. *Id.* at ¶ 7. In short, Plaintiff has been diligent to ensure that this case remains on track.

**Second**, Plaintiff’s need to amend the FAC is the result of recent developments that were not reasonably foreseen or anticipated when the parties submitted the Joint Scheduling Notice in February. Specifically, only after the discovery of new evidence could Plaintiff understand (i) that Space-Lok and Montgomery Machine [REDACTED], (ii) that the four relevant Lisi Aerospace entities [REDACTED], (iii) that Robert Briles’s Employee Agreement with Plaintiff would be discovered, or (iv) that Robert Briles would take a position in this litigation that he has no knowledge of any trade secrets relating to the SLEEVbolt® that were sold by Paul R. Briles, Inc. d/b/a PB Fasteners to Plaintiff in the APA, squarely contradicting representations he previously made.

*Misappropriation by Space-Lok and Montgomery Machine:* Documents produced by Space-Lok and Boeing (on June 11 and 12, respectively) revealed for the first time that Space-Lok and Montgomery Machine [REDACTED] Plaintiff served a document subpoena on Space-Lok on March 28, shortly after discovery commenced in this action. *See* Wood Decl., at ¶ 8. Although Space-Lok resisted producing communications with Boeing for more than two months, it ultimately agreed to do so and made its production

1 on June 11. *Id.* at ¶¶ 9–10. Plaintiff reviewed this production the very next day. *Id.* at  
 2 ¶ 11. Among the documents produced by Space-Lok, Plaintiff discovered extensive  
 3 evidence that [REDACTED]

4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED].

12 Plaintiff also served a document subpoena on Boeing on March 7, shortly after  
 13 Plaintiff was allowed to pursue discovery from third parties. *See* Wood Decl., at ¶ 17.  
 14 Boeing refused to produce a single document in response to the subpoena absent judicial  
 15 intervention. Plaintiff was therefore required to file a motion to compel discovery in  
 16 the Northern District of Illinois, which was granted in substantial part on June 7. *See*  
 17 *SPS Technologies, LLC v. The Boeing Company*, Case No. 19-cv-3365, ECF #21 (N.D.  
 18 Ill., June 7, 2019) (attached as Ex. 7 to Wood Decl.). Boeing then produced over 20,000  
 19 documents on June 8, 12, 18, and 28. *See* Wood Decl., at ¶ 20. Boeing’s June 12 and  
 20 18 productions were the first to include documents disclosing [REDACTED]

21 [REDACTED]

22 Plaintiff knew none of this before Space-Lok’s and Boeing’s productions.  
 23 Indeed, Space-Lok and Boeing actively prevented Plaintiff from discovering this  
 24 information, notwithstanding Plaintiff’s diligent efforts to obtain it from either potential  
 25 source. Accordingly, the fact that [REDACTED]  
 26 [REDACTED] was not revealed until June 11 warrants a finding  
 27 of good cause under Rule 16(b)(4). *See Adobe Systems*, 2017 WL 10338210, at \*3–4;  
 28 *Universal Studios*, 2018 WL 5276298, at \* 2.

1        *Personal Jurisdiction over Lisi Aerospace:* Similarly, Boeing’s document  
2 production on June 12 and 18 were the first to provide evidence that all relevant Lisi  
3 Aerospace entities [REDACTED]. On September  
4 21, 2018, Boeing disclosed that Lisi Aerospace Canada Corp. (“Lisi Canada”), an entity  
5 headquartered near Montreal, had qualified to manufacture “protruding head” tapered  
6 sleeve bolts. *See Wood Decl.*, ¶ 25 & Ex. 10. Because Plaintiff understood that personal  
7 jurisdiction over Lisi Canada was uncertain in California and that time was of the  
8 essence to stop the irreparable harm caused by the ongoing misappropriation, Plaintiff  
9 filed suit in Montreal Superior Court shortly after it filed the complaint in this action.  
10 *Id.* at ¶¶ 26–27. On March 4, 2019, Plaintiff learned that Blanc Aero Industries SAS  
11 (“Lisi France”), another Lisi Aerospace entity headquartered in Paris, had qualified to  
12 manufacture “flush head” tapered sleeve bolts for Boeing. *See Wood Decl.*, ¶ 28 & Ex.  
13 11, at 9. Plaintiff undertook an investigation and, based on the information available to  
14 it at the time, was unable to identify sufficient facts to allege personal jurisdiction over  
15 Lisi France in either Canada or California. *Id.* at ¶ 29; Crowe Decl., at ¶ 4. Thus,  
16 although Plaintiff understood there were at least two Lisi Aerospace entities involved  
17 in the manufacture of tapered sleeve bolts by March 2019, Plaintiff was unaware of the  
18 facts necessary to support personal jurisdiction over both Lisi Aerospace entities in any  
19 one forum, and Plaintiff did not have the jurisdictional facts necessary to bring Lisi  
20 France into either ongoing litigation. *See Adobe Systems*, 2017 WL 10338210, at \*3–4  
21 (rejecting the “piecemeal and inefficient” practice of filing motions to amend before  
22 sufficient investigation, including “the opportunity to obtain and review intra-party and  
23 third-party discovery”); *cf. also DCD Programs, LTD. v. Leighton*, 833 F.2d 183, 187  
24 (9th Cir. 1987) (holding that waiting for sufficient evidence of wrongful conduct is a  
25 satisfactory explanation for delay).

26        On June 12 and 18, however, Boeing produced documents that revealed sufficient  
27 evidence to establish personal jurisdiction over all relevant Lisi Aerospace entities in  
28 California. [REDACTED]

[REDACTED]

[REDACTED]. Both Lisi Aerospace North America and HI-SHEAR are headquartered in California. As another example, [REDACTED]

[REDACTED]

[REDACTED] Indeed, California is the only active forum where Plaintiff can pursue all of its trade secret claims against

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<sup>3</sup> [REDACTED]

<sup>4</sup> [REDACTED]

1 the Lisi Aerospace entities in a single action, as Plaintiff remains unable to identify  
2 sufficient facts to allege personal jurisdiction over Lisi France in Canada.

3 Plaintiff has been diligent in seeking discovery relating to Lisi Aerospace in this  
4 action. Plaintiff specifically requested documents relating to Lisi Aerospace in its  
5 March 7 subpoena to Boeing, but, as noted above, Boeing refused to produce any such  
6 documents until ordered to do so on June 7. *See* Wood Decl., at ¶ 18. Plaintiff also  
7 served a subpoena on Lisi Aerospace North America, the principal Lisi Aerospace entity  
8 within the subpoena power of the Court. *See* Wood Decl., at ¶ 31. Lisi Aerospace  
9 North America has asserted that no responsive documents exist. *Id.*; *but see id.*, Exs.  
10 12–16. Thus, despite Plaintiff’s diligent efforts to obtain discovery relating to Lisi  
11 Aerospace, Plaintiff could not reasonably have foreseen the development of facts  
12 establishing personal jurisdiction over all four Lisi Aerospace entities in California.  
13 Given Plaintiff’s diligence in seeking discovery relating to Lisi Aerospace and the  
14 significant overlap between Plaintiff’s claims against Lisi Aerospace and those already  
15 at issue in the case, “it makes much more sense to join [Lisi Aerospace] in this lawsuit  
16 rather than forc[e] Plaintiff[] to file a separate lawsuit against them.” *Universal Studios*,  
17 2018 WL 5276298, at \* 2.

18 *Discovery of Robert Briles’s Employee Agreement:* Plaintiff acquired the assets  
19 of Paul R. Briles, Inc. d/b/a PB Fasteners in 2011. Before the acquisition, Robert Briles  
20 was the President of Paul R. Briles, Inc. As part of his employment by Plaintiff after  
21 the asset acquisition, Robert Briles entered into a valid and enforceable Employee  
22 Agreement in September 2011. Before naming Robert Briles as a defendant in the FAC,  
23 the General Manager of PB Fasteners directed a diligent search for any confidentiality  
24 agreements that Robert Briles had executed with PB Fasteners, and was unable to locate  
25 an Employee Agreement. PB Fasteners maintains hard copy personnel files of former  
26 employees dating back decades in approximately 50 boxes at its facility. Cooper Decl.,  
27 at ¶ 4. In the regular course of business, those files are organized alphabetically and  
28 by year of departure. *Id.* at ¶ 5. When counsel for Plaintiff requested Robert Briles’s



1 personnel file, Plaintiff was unable to locate it in the box where it should have been kept  
2 in the ordinary course of business or elsewhere in the facility. *Id.* at ¶¶ 6–9.

3 In response to Briles Aerospace’s Second Motion to Compel (Dkt. 137), the  
4 General Manager of PB Fasteners organized a search for the personnel files of other  
5 employees who were alleged to have relevant documents by Briles Aerospace. *Id.* at  
6 ¶ 10. In conducting that search, Plaintiff discovered that Robert Briles’s personnel file,  
7 including his Employee Agreement, had been misfiled in a box with the personnel files  
8 of other employees. *Id.* at ¶¶ 11–12. Specifically, Robert Briles’s personnel file was  
9 located in the wrong year of departure. *Id.* at ¶ 13. This discovery was made on May  
10 29. *Id.* at ¶ 14. Robert Briles did not produce a copy of the Employee Agreement until  
11 June 14. Wood Decl. ¶ 49 & Ex. 19. That Plaintiff would uncover Robert Briles’s  
12 Employee Agreement in a box containing other employees’ files was not reasonably  
13 foreseeable when the parties submitted the Joint Scheduling Notice on February 28.  
14 Nor was Plaintiff required to conduct a burdensome manual search through all of the  
15 dozens of boxes of former employee personnel files to confirm that Robert Briles’s  
16 personnel file was in fact missing in order to establish its diligence. This is particularly  
17 true in this case where Robert Briles concedes that he retained a large volume of  
18 documents from PB Fasteners after he left the company, including specifically  
19 employee personnel files. (Dkt. 132 at 13–15.)

20 *Assertion of Fraud by Robert Briles:* In interrogatory responses served on June  
21 28, 2019, Robert Briles asserted that he has no knowledge of confidential, proprietary,  
22 and/or trade secret information relating to the SLEEVbolt® that was sold or transferred  
23 by Paul R. Briles, Inc. d/b/a PB Fasteners to Plaintiff. Wood Decl., Ex. 18 at 3. Thus,  
24 in effect, Robert Briles now asserts that, before the APA, Paul R. Briles, Inc. did not  
25 own the trade secret dimensions, formulae, and processes that Plaintiff has identified in  
26 this lawsuit and/or that such dimensions, formulae, and processes are not trade secret or  
27 proprietary information.

1 This new assertion squarely contradicts representations that Robert Briles made  
2 to Plaintiff in connection with the sale of Paul R. Briles, Inc.'s assets in 2011. As one  
3 example, during a teleconference with counsel for Plaintiff, counsel for Paul R. Briles,  
4 Inc., and representatives of the Federal Trade Commission on June 7, 2011, Robert  
5 Briles represented that Paul R. Briles, Inc. owned trade secrets, including specifically  
6 the processes used in the manufacture of the SLEEVbolt®. Wood Decl., at ¶¶ 45–46.  
7 As another example, in the APA itself, Robert Briles represented (i) that Paul R. Briles,  
8 Inc.'s intellectual property rights included trade secrets, (ii) that Paul R. Briles, Inc.  
9 owned such trade secrets free and clear, (iii) that Paul R. Briles, Inc. was aware of no  
10 improper use of such trade secrets by others, and (iv) that the assets acquired by Plaintiff  
11 included all such trade secrets. SAC ¶ 70. Robert Briles made these representations on  
12 behalf of, and as authorized by, the Directors and shareholders of Paul R. Briles, Inc.,  
13 including Robert Briles (as an individual and trustee) and Richard Briles (as an  
14 individual and trustee). *Id.* ¶ 69. Robert Briles's new assertion also squarely contradicts  
15 the contemporaneous conduct of the parties to the APA. As one example, before the  
16 APA, Paul R. Briles, Inc. licensed its trade secrets relating to the SLEEVbolt® to  
17 Plaintiff and received significant royalties in return. Wood Decl., at ¶¶ 47–48. Robert  
18 Briles signed that license agreement on behalf of Paul R. Briles, Inc. *Id.* As another  
19 example, the parties to the APA negotiated a purchase price of [REDACTED] for the  
20 assets of Paul R. Briles, Inc., which could not be justified by the value of Paul R. Briles,  
21 Inc.'s non-trade secret assets or its non-SLEEVbolt® sales at the time. SAC ¶ 74.

22 If the new assertion made in Robert Briles's interrogatory responses is true, then  
23 the Directors and shareholders of Paul R. Briles, Inc. intentionally misrepresented  
24 and/or concealed material facts regarding Paul R. Briles, Inc.'s ownership of trade  
25 secrets. Before Robert Briles served his interrogatory responses, Plaintiff was unaware  
26 of a factual basis for such claims. Because it could not have been reasonably anticipated  
27 that Robert Briles would disclaim the representations he made in connection with the  
28 APA, there is good cause to allow amendment of the FAC in this action.

1       **Third**, Plaintiff acted diligently in seeking modification of the scheduling order  
2 when it became apparent that amendment of the FAC was necessary. Space-Lok  
3 produced documents disclosing [REDACTED]  
4 [REDACTED] on June 11. Wood Decl., at ¶ 10. Boeing produced documents  
5 providing [REDACTED]  
6 [REDACTED] on June 12 and 18. *Id.* at ¶ 21. Shortly thereafter, on June 18, counsel for  
7 Plaintiff informed counsel for Defendants that Plaintiff planned to seek leave to amend  
8 the FAC to add new parties and claims, and provided counsel for Defendants with  
9 documents reflecting the basis of such claims against Space-Lok and Montgomery  
10 Machine. *Id.* at ¶ 40. Plaintiff also informed the Court on June 18 that recently  
11 produced documents would require modification of the scheduling order and  
12 amendment of the FAC. (Dkt. 154 at 4.) On June 24, Plaintiff filed its Request for a  
13 Status Conference to adjust case deadlines and set a briefing schedule on this Motion.  
14 (Dkt. 162.) Thus, despite needing to review over 20,000 recently produced documents  
15 to investigate new claims, Plaintiff alerted both Defendants and the Court of the need  
16 for amendment in a few days. Wood Decl., at ¶¶ 21, 40.

17       In addition, Plaintiff acted diligently with respect to its claims against Robert  
18 Briles. Plaintiff discovered a copy of Robert Briles's Employee Agreement on May 29,  
19 and Robert Briles revealed the facts supporting claims for intentional misrepresentation  
20 and concealment in his interrogatory responses on June 28. *Id.*, Ex. 18. Plaintiff  
21 informed Defendants of the discovery of the Employee Agreement on June 18, *id.* at  
22 ¶ 41, and described that discovery for the Court on June 26 in Plaintiff's Motion for  
23 Partial Reconsideration, (Dkt. 171). During meet-and-confer calls with counsel for  
24 Defendants on July 8 and 9, counsel for Plaintiff provided the detailed factual basis for  
25 all three of its additional claims against Robert Briles and cited specific documents in  
26 support of each new claim. Wood Decl., at ¶ 42. Following the meet-and-confer  
27 process, Plaintiff promptly filed the instant Motion. This exercise of diligence after the  
28

1 discovery of changed circumstances fully supports a finding of good cause under Rule  
2 16(b)(4). *See Adobe Systems*, 2017 WL 10338210, at \*3.

## 3 **II. LEAVE TO AMEND SHOULD BE GRANTED UNDER RULE 15.**

4 Under Rule 15(a), courts should “freely give leave [to amend] when justice so  
5 requires.” Fed. Rule of Civ. Proc. 15(a). The “policy of favoring amendments to  
6 pleadings should be applied with extreme liberality.” *DCD Programs, Ltd. v. Leighton*,  
7 833 F.2d 183, 186 (citation and internal quotation marks omitted); *see also Griggs v.*  
8 *Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999) (noting that “all inferences”  
9 should be drawn “in favor of granting the motion.”). Courts permit the amendment of  
10 pleadings unless the opposing party makes a showing of undue delay, bad faith, undue  
11 prejudice, or futility of the amendment on the part of the moving party. *See DCD*  
12 *Programs*, 833 F.2d at 186; *see also Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d  
13 1048, 1052 (9th Cir. 2003) (“Absent prejudice, or a strong showing of any of the  
14 remaining . . . factors, there exists a *presumption* under Rule 15(a) in favor of granting  
15 leave to amend.”). Under each of these factors, Plaintiff’s Motion should be granted.

### 16 **A. Leave Should Be Granted to Assert Claims for Trade Secret** 17 **Misappropriation Against Space-Lok, Montgomery Machine, and** 18 **Lisi Aerospace (SAC Causes of Action Nos. 14–19).**

19 Plaintiff seeks leave to amend the FAC to add claims for trade secret  
20 misappropriation against Space-Lok, Montgomery Machine, and Lisi Aerospace under  
21 the DTSA and the CUTSA. Because this request is not the result of undue delay or bad  
22 faith, will not cause undue prejudice, and is not futile, the request should be granted.

23 Discovery in this action commenced in March 2019 after the preliminary  
24 injunction phase of the case. Since that time, Plaintiff has worked diligently in  
25 conducting discovery, including from Boeing, Space-Lok, and Lisi Aerospace, although  
26 those entities have resisted producing responsive documents. Wood Decl., at ¶¶ 9, 18,  
27 & 31. Space-Lok’s June 11 production was the first to disclose [REDACTED]  
28 [REDACTED] *Id.*, at ¶ 12. Boeing’s

1 June 12 and 18 productions were the first to provide [REDACTED]  
 2 [REDACTED] *Id.*, at ¶ 30. By  
 3 June 18, Plaintiff had informed Defendants and the Court that newly produced  
 4 documents would require modification of the scheduling order and amendment of the  
 5 FAC, (Dkt. 154 at 4.), and, on June 24, Plaintiff followed up with a Request for a Status  
 6 Conference to adjust case deadlines and set a briefing schedule for this Motion, (Dkt.  
 7 162.). Thus, despite needing to review over 20,000 documents produced after June 11  
 8 to investigate new claims against new parties, Plaintiff alerted both Defendants and the  
 9 Court of the need for amendment in a few days.

10 Where, as here, a party offers a reasonable explanation for the timing of its  
 11 amendment, courts allow the amendment to proceed. *DCD Programs, Ltd.*, 833 F.2d  
 12 at 186 (holding that waiting for sufficient evidence of wrongful conduct is a satisfactory  
 13 explanation for delay); *SAES Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp. 2d 1081,  
 14 1086 (S.D. Cal. 2002) (“[C]ourts will permit amendment provided the moving party has  
 15 a reasonable explanation for the delay.”). Because Plaintiff sought leave as soon as it  
 16 became apparent that amendment of the FAC was necessary, there was no undue delay  
 17 in bringing this Motion. Indeed, courts routinely allow amendment in cases that are far  
 18 more advanced than this one. *See, e.g., DCD Programs, Ltd.*, 833 F.2d at 186 (no undue  
 19 delay where party moved to amend fourteen months after initial complaint filed);  
 20 *Howey v. United States*, 481 F.2d 1187, 1990 (9th Cir. 1973) (reversing denial of leave  
 21 to amend after unjustified five-year delay). And in any event, “[u]ndue delay by itself  
 22 is insufficient to justify denying leave to amend.” *United States v. United Healthcare*  
 23 *Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016).

24 Defendants also cannot show that Plaintiff has acted in bad faith in asserting  
 25 claims against Space-Lok, Montgomery Machine, or Lisi Aerospace. Courts have  
 26 construed “bad faith” to mean the addition of “baseless” legal theories or the use of such  
 27 “sharp practice tactics” as, for example, seeking to add a defendant solely to destroy  
 28 diversity jurisdiction. *Griggs*, 170 F.3d at 881; *SAES Getters*, 219 F. Supp. 2d at 1095.

1 It is not bad faith to amend to bring all relevant parties into the action. Plaintiff did not  
2 know that [REDACTED]  
3 [REDACTED]. In light  
4 of the recent revelations, it is far more efficient to litigate all claims in this action  
5 because (i) Plaintiff remains unable to identify sufficient facts to allege personal  
6 jurisdiction over Lisi France in Canada, (ii) the case against each manufacturer involves  
7 the same claims, the same product, the same trade secrets, the same documents, and the  
8 same witnesses, and (iii) the Court and parties are already familiar with the issues in  
9 dispute. Amending the FAC to bring in the relevant parties ensures that justice is  
10 accomplished by permitting Plaintiff to protect its rights and recover its damages from  
11 all entities engaged in the same course of conduct.

12 Defendants cannot establish that they will be prejudiced by the addition of Space-  
13 Lok, Montgomery Machine, or Lisi Aerospace. Plaintiff has asserted no new theories  
14 of trade secret misappropriation against any current Defendant. Rather, the new claims  
15 against Space-Lok, Montgomery Machine, and Lisi Aerospace are substantially similar  
16 to the claims that Plaintiff has asserted against Briles Aerospace. All of Plaintiff's  
17 claims involve the same product, the same engineering and manufacturing technology,  
18 and the same trade secret dimensions, formulae, and processes necessary to manufacture  
19 the SLEEVbolt®. In addition, all of Plaintiff's trade secret claims allege that the  
20 misappropriation occurred, in part, through the same qualification process. As a result,  
21 all of Plaintiff's trade secret claims will involve the same documents, as well as the  
22 same witnesses who have been involved in the qualification of Plaintiff, Briles  
23 Aerospace, Space-Lok, Montgomery Machine, and Lisi Aerospace to manufacture  
24 tapered sleeve bolts. Defendants thus cannot show the requisite prejudice or negative  
25 effect because none of the new trade secret claims would require Defendants to  
26 undertake an "entirely new course of defense." *SAES Getters*, 219 F. Supp. 2d at 1086,  
27 quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990);  
28 see also *Munchkin, Inc. v. Luv N' Care Ltd.*, 2014 WL 12560778, at \*2 (C.D. Cal. Oct.



1 1, 2014) (finding no undue prejudice because “both the original complaint and the  
2 proposed [complaint] concern the same accused products.”).

3 Nor can Defendants make “any showing that the discovery to date is irrelevant to  
4 the claims in the proposed [complaint].” *Munchkin*, 2014 WL 12560778, at \*2. In fact,  
5 much of the relevant discovery for the new trade secret claims already has been  
6 completed. As one example, the parties have produced their respective documents  
7 relating to the development and use of the trade secrets at issue. As another example,  
8 the parties have produced documents relating to the development, manufacture,  
9 qualification, and sale of tapered sleeve bolts to Boeing. Moreover, there is unlikely to  
10 be significant duplication in discovery or motions practice after amendment. Neither  
11 party has filed initial expert disclosures or motions for summary judgment. At least 14  
12 depositions have yet to be taken by the parties, including the depositions of Defendant  
13 Robert Briles, Lisi Aerospace, Space-Lok, and Boeing. Defendants themselves have  
14 identified Space-Lok and Lisi Aerospace as relevant sources of discovery, but, to  
15 Plaintiff’s knowledge, Defendants have been unable to obtain much of the discovery  
16 they seek. No documents have been produced by Lisi Aerospace in this litigation  
17 despite subpoenas from both Briles Aerospace and Plaintiff. And Briles Aerospace’s  
18 subpoena to Space-Lok was quashed in part. (Dkt. 165.) Adding these parties to the  
19 case thus will allow Plaintiff and Defendants to complete the discovery they seek.

20 Furthermore, the “mere fact that more work may be involved does not constitute  
21 prejudice that can prevent amendment.” *Munchkin*, 2014 WL 12560778, at \*2; *see also*  
22 *Anderson v. City of Rialto*, 2017 WL 10562684, at \*2 (C.D. Cal. March 2, 2017) (no  
23 undue prejudice despite written discovery); *Talwar v. Creative Labs, Inc.*, 2007 WL  
24 1723609, at \*5 (C.D. Cal. June 14, 2007) (no undue prejudice even though defendant  
25 “ha[d] already engaged in months of discovery,” the discovery cut-off “[was] only  
26 weeks away,” defendant would have to take new depositions, and experts would have  
27 to “alter their analyses”); *Fru-Con Const. Corp. v. Sacramento Mun. Utility Dist.*, 2006  
28 WL 3733815, at \*5 (E.D. Cal. Dec. 15, 2006) (no undue prejudice even though



1 defendant argued discovery would have to be extended and trial would be more  
2 complicated with new parties). Discovery has revealed the need for parallel claims  
3 against new manufacturers based on substantially overlapping facts. As a result,  
4 amendment is necessary for the complete adjudication of the dispute. *See Anderson*,  
5 2017 WL 10562684, at \*2; *Fru-Con Const. Corp.*, 2006 WL 3733815, at \*5; *Genentech*,  
6 *Inc. v. Abbott Laboratories*, 127 F.R.D. 529, 531 (N.D. Cal. 1989) (no undue prejudice  
7 even though amendment would require defendant to depose “numerous witnesses  
8 across the country who have been previously questioned and would necessitate  
9 additional document searches and written discovery”).

10 Although the parties have worked diligently to meet the Court’s deadlines, they  
11 also contemplated that discovery would continue after the cut-off. Wood Decl., at ¶ 7.  
12 It is now clear that, regardless of whether amendment is granted, the trial date will likely  
13 need to move to accommodate the remaining fact and expert discovery, as well as  
14 dispositive and pre-trial motions. As a result, any additional discovery necessitated by  
15 the joinder of new parties can be accommodated in advance of trial. *See Talwar*, 2007  
16 WL 1723609, at \*5 (no undue prejudice where the parties anticipate modifications to  
17 the scheduling order).

18 It is far more efficient to adjudicate all of Plaintiff’s trade secret claims in one  
19 forum. It is undisputed that Plaintiff can file these claims separately, and thus the “same  
20 discovery on the new claims will occur in this or another forum.” *Munchkin*, 2014 WL  
21 12560778, at \*2. That likely would subject Defendants to duplication of discovery as  
22 third-parties to those actions. It would also risk significant duplication of effort for a  
23 large number of witnesses, including representatives from Boeing, Briles Aerospace,  
24 Space-Lok, Montgomery Machine, and Lisi Aerospace. For these reasons, “[j]udicial  
25 efficiency and avoidance of the risk of inconsistent judgments weighs heavily in favor  
26 of amendment.” *Munchkin*, 2014 WL 12560778, at \*2; *see also Eichler v. Tilton*, 2008  
27 WL 109340, at \*2 (E.D. Cal. Jan. 8, 2008), *aff’d*, 2008 WL 3889738 (E.D. Cal. Aug.

20, 2008) (“Granting plaintiff leave to amend will include all defendants in one action, and therefore will promote the speedy resolution of the entire controversy.”).

Finally, the trade secret claims against Space-Lok, Montgomery Machine, and Lisi Aerospace under the DTSA and the CUTSA are not futile. *See DCD Programs*, 833 F.2d at 188 (holding that an amendment is futile only if it would clearly be subject to dismissal); *SAES Getters*, 219 F. Supp. 2d at 1086. Plaintiff has adequately pleaded its trade secret claims against Space-Lok, Montgomery Machine, and Lisi Aerospace in the SAC. *See* SAC, at ¶¶ 241–91. Indeed, these trade secret claims are based on similar facts and legal theories as the trade secret claims alleged against Briles Aerospace, which Briles Aerospace has not moved to dismiss.

In sum, Rule 15’s policy of “extreme liberality” with respect to allowing amendment weighs heavily in favor of granting Plaintiff’s Motion. *DCD Programs*, 833 F.2d at 186. Defendants cannot demonstrate prejudice, nor can they carry their burden of making a “strong showing” that the remaining factors require denial of leave to amend. *See Cole v. CRST, Inc.*, 317 F.R.D. 141, 146 (C.D. Cal. 2016).

**B. Leave Should be Granted to Assert a Claim for Breach of Contract Against Robert Briles (SAC Cause of Action No. 11).**

Plaintiff also seeks leave to amend the FAC to add a claim for breach of the Employee Agreement against Robert Briles. This request also is not the result of undue delay or bad faith, will not cause undue prejudice, and is not futile.

Plaintiff did not discover Robert Briles’s Employee Agreement until May 29, 2019, when Plaintiff found that Robert Briles’s personnel file, including his Employee Agreement, had been misfiled with other employees’ personnel files. Plaintiff informed Defendants of the discovery of the Employee Agreement on June 18, Wood Decl., at ¶ 41, and described that discovery for the Court on June 26 in Plaintiff’s Motion for Partial Reconsideration, (Dkt. 171). Because Plaintiff did not learn that it had a basis for this claim until the Employee Agreement was uncovered, Plaintiff’s proposed amendment should be granted. *SAES Getters*, 219 F. Supp. 2d at 1086 (“[C]ourts will

1 permit amendment provided the moving party has a reasonable explanation for the  
2 delay.”). Moreover, to the extent Defendants oppose amendment on the basis of timing,  
3 “delay, by itself, is insufficient to justify denial of leave to amend.” *DCD Programs*,  
4 833 F.2d at 186 (citing *U.S. v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981)) (internal  
5 citations omitted); *Hurn v. Retirement Fund Trust of Plumbing*, 648 F.2d 1252, 1254  
6 (9th Cir.1981)).

7 Nor can Defendants show any “wrongful motive” or bad faith on the part of  
8 Plaintiff that would warrant denial of leave to amend. *DCD Programs*, 833 F.2d at  
9 187. Plaintiff does not seek to assert “baseless” legal theories or use “sharp practice  
10 tactics.” *Griggs*, 170 F.3d at 881; *SAES Getters S.p.A.*, 219 F. Supp. 2d at 1095. Rather,  
11 Plaintiff merely seeks to assert a standard breach of contract claim against an existing  
12 Defendant based on newly discovered evidence.

13 Defendants also cannot establish that they will be prejudiced by the addition of  
14 the new breach of contract claim against Robert Briles. This claim would not require  
15 Robert Briles to “undertake[]...an entirely new course of defense.” *SAES Getters*, 219  
16 F. Supp. 2d at 1086 (internal citations omitted). To the contrary, Plaintiff already has  
17 alleged one breach of contract claim against Robert Briles under the APA. The new  
18 breach of contract claim under the Employee Agreement arises from the same set of  
19 facts, namely, that Robert Briles retained, used, and disclosed Plaintiff’s confidential  
20 and proprietary information with Michael Briles and Briles Aerospace. Much of the  
21 discovery conducted to date is relevant to the proposed breach of contract claim, and  
22 even if the parties were to propound new discovery requests relating to the claim for  
23 breach of the Employee Agreement, “[t]he mere fact that more work may be involved  
24 does not constitute prejudice that can prevent amendment.” *Munchkin, Inc.*, 2014 WL  
25 12560778, at \*2 (citation omitted). Thus, the addition of this claim would not cause  
26 undue prejudice.

27 Nor is the claim for breach of the Employee Agreement futile, as it is not “clearly  
28 subject to dismissal.” *SAES Getters*, 219 F. Supp. 2d 1081, 1086 (citing *DCD*

1 *Programs, Ltd.*, 833 F.2d at 188; *Moore v. Kayport Package Express*, 885 F.2d 531,  
 2 542 (9th Cir.1989)). The Employee Agreement is a valid and enforceable contract,  
 3 which is designed to protect Plaintiff's trade secrets and other confidential and  
 4 proprietary business information. State and federal courts in California routinely  
 5 enforce such agreements. *See, e.g., Erhart v. Bofl Holding, Inc.*, 2017 WL 588390, at  
 6 \*8-9 (S.D. Cal. February 14, 2017); *ReadyLink Healthcare v. Cotton*, 126 Cal. App. 4th  
 7 1006, 1018, 24 Cal. Rptr. 3d 720, 728 (2005)).

8 Michael Briles has moved to dismiss Plaintiff's Ninth Cause of Action, which  
 9 involves a similar confidentiality agreement. (Dkt. 152.) In that motion, Michael Briles  
 10 argues that the Employee Agreement is void under Bus. & Prof. Code § 16600 because  
 11 its provisions function as a "*de facto*" non-competition agreement. For the reasons set  
 12 forth in Plaintiff's Opposition to that Motion (Dkt. 161), which is incorporated herein  
 13 by reference, that argument is wrong for at least four reasons.

14 *First*, the issue of whether a confidentiality agreement is "a restraint of a  
 15 substantial character" that falls within the ambit of Section 16600 is a question of fact,  
 16 and thus is not proper for resolution at the pleading stage. *Golden v. California*  
 17 *Emergency Physicians Med. Grp.*, 896 F.3d 1018 (9th Cir. 2018).

18 *Second*, Defendant's Employee Agreement is not a covenant not to compete  
 19 subject to Section 16600; it is a standard contract containing provisions intended to  
 20 protect Plaintiff's trade secrets and other confidential and proprietary information. Such  
 21 provisions are routinely enforced in California. *See, e.g., Erhart*, 2017 WL 588390, at  
 22 \*8-9 (finding that enforcement of confidentiality agreements "serves several legitimate  
 23 interests," including "the longstanding established public policy in California which  
 24 respects and promotes the freedom of private parties to contract," the "significant  
 25 government interests promoted by legal protection of trade secrets," and "**protecting**  
 26 **other confidential and business information that may not qualify for trade secret**  
 27 **protection.**") (quotation marks omitted) (emphasis added)); *ReadyLink Healthcare*, 126  
 28 Cal. App. 4th at 1018.

1        *Third*, even if Section 16600 were to apply, where, as here, “a former employee  
 2 uses a former employer’s trade secrets or otherwise commits unfair competition,  
 3 California Courts recognize a judicially created exception to section 16600 and will  
 4 enforce a restrictive covenant in such a case.” *ReadyLink Healthcare*, 126 Cal. App.  
 5 4th at 1022 (internal quotation marks omitted); *Fields v. QSP, Inc.*, 2012 WL 2049528,  
 6 at \*9 (C.D. Cal. June 4, 2012) (Section 16600 “does not invalidate an agreement  
 7 between an employer and employee that seeks to maintain the confidentiality of an  
 8 employer’s trade secret *or other proprietary information*.”).

9        *Fourth*, even if Section 16600 were to apply, the offending provisions can easily  
 10 be severed, leaving in place the essential confidentiality terms in the Employee  
 11 Agreement. For example, the Employee Agreement prohibited Robert Briles from  
 12 retaining written materials relating to “private or confidential matters of the Company  
 13 and its business.” SAC ¶¶ 81–82. It is indisputable that such a provision does not  
 14 constitute “a restraint of a substantial character” on Robert Briles’s ability to compete  
 15 in the marketplace. *Golden v. California Emergency Physicians Med. Grp.*, 782 F.3d  
 16 1083 1091 (9th Cir. 2015). Moreover, Robert Briles concedes that he retained a large  
 17 volume of confidential documents from PB Fasteners after he left the company,  
 18 including over 3.67 terabytes of data. (Dkt. 132 at 12–15.) There is no legal basis to  
 19 disregard such violations under Section 16600.

20        Because the breach of contract claim is “obviously not frivolous, or made as a  
 21 dilatory maneuver in bad faith,” the Court should grant Plaintiff leave to amend.  
 22 *Howey*, 481 F.3d at 1190-91.

23        **C. Leave Should be Granted to Assert Claims for Intentional**  
 24        **Misrepresentation and Concealment Against Robert Briles (as an**  
 25        **individual and as a trustee) and Richard Briles (as an individual and**  
 26        **as a trustee) (SAC Causes of Action Nos. 11–12).**

27        Plaintiff also seeks leave to amend the FAC to add claims for intentional  
 28 misrepresentation and concealment against Robert Briles (as an individual and as a  
 trustee) and Richard Briles (as an individual and as a trustee), who were Directors and

1 shareholders of Paul R. Briles, Inc. at the time of the APA. This request also is not the  
2 result of undue delay or bad faith, will not cause undue prejudice, and is not futile.

3 In his interrogatory responses, Robert Briles asserted that he has no knowledge  
4 of confidential, proprietary, and/or trade secret information relating to the SLEEVbolt®  
5 that was sold or transferred by Paul R. Briles, Inc. d/b/a PB Fasteners to Plaintiff in  
6 connection with the APA. Wood Decl., Ex. 18. As described above, this new assertion  
7 squarely contradicts the representations that Robert Briles made on behalf of the  
8 Directors and shareholders of Paul R. Briles, Inc. to Plaintiff in connection with the  
9 APA, as well as the conduct of the parties to that agreement at the time. Plaintiff was  
10 unaware of the factual basis for such an intentional misrepresentation or concealment  
11 claim until Robert Briles served his interrogatory responses on June 28. The timing of  
12 Robert Briles's new assertions more than rebuts any suggestion of undue delay. *SAES*  
13 *Getters*, 219 F. Supp. 2d at 1086. Moreover, because "there is no evidence in the record  
14 which would indicate a wrongful motive, there is no cause to . . . [deny] leave to amend  
15 on the basis of bad faith." *DCD Programs*, 833 F.2d at 187.

16 Defendants also cannot establish that they will be prejudiced by the addition of  
17 the intentional misrepresentation and concealment claims. These claims arise from the  
18 same set of facts that are already at issue in this dispute, and much of the necessary  
19 discovery already has been completed. As one example, Plaintiff has reviewed and  
20 produced APA documents relating to the trade secrets or valuation of Paul R. Briles,  
21 Inc.'s assets. As another example, Plaintiff has reviewed and produced documents  
22 relating to contemporaneous proceedings before the Federal Trade Commission in  
23 which the asset sale and trade secrets were discussed. Robert Briles has not yet been  
24 deposed, and even if the parties were to propound additional discovery requests relating  
25 to the new claims, "[t]he mere fact that more work may be involved does not constitute  
26 prejudice that can prevent amendment." *Munchkin, Inc.*, 2014 WL 12560778, at \*2  
27 (citation omitted). Regardless of whether leave to amend is granted, the current trial  
28 date will likely need to move to accommodate the remaining discovery and dispositive



1 motions. As a result, any additional discovery necessitated by the joinder of Richard  
 2 Briles as a Defendant can be accommodated in advance of trial. *See Talwar*, 2007 WL  
 3 1723609, at \*5. Thus, the addition of Plaintiff’s intentional misrepresentation and  
 4 concealment claims would not cause undue prejudice.

5 Finally, Defendants cannot show that the claims for intentional misrepresentation  
 6 and concealment against Robert Briles (as an individual and as a trustee) and Richard  
 7 Briles (as an individual and as a trustee) are futile. *See Munchkin*, 2014 WL 12560778,  
 8 at \*2. Although fraud claims are subject to a three-year statute of limitations, the claim  
 9 does not accrue “until the discovery, by the aggrieved party, of the facts constituting  
 10 fraud[.]” *Moran v. Bromma*, 2013 WL 4780772, at \*4 (E.D. Cal. Sept. 5, 2013)  
 11 (quoting *Kline v. Turner*, 105 Cal. Rptr. 2d 699, 702 (Cal. Ct. App. 2001)); *see also* Cal.  
 12 Civ. Proc. Code § 338(d). Because Plaintiff did not learn of the essential facts  
 13 establishing a basis to believe Robert and Richard Briles had made intentional  
 14 misrepresentations or concealed fraud until Robert Briles served his discovery response  
 15 on June 28, Plaintiff’s claims are well within the applicable limitations period.

16 In addition, Plaintiff has adequately pleaded claims for intentional  
 17 misrepresentation and concealment. “Under Rule 9(b), a plaintiff is required to state  
 18 with particularity the circumstances of his allegations of fraud.” *Swafford v. Int’l Bus.*  
 19 *Machines Corp.*, 2019 WL 1676213, at \*6 (N.D. Cal. Apr. 17, 2019) (citing *Kearns v.*  
 20 *Ford Motor Co.*, 567 F.3d 1120, 1124, 1126 (9th Cir. 2009) (internal citations and  
 21 quotations omitted)). “In California,” those elements are: “(1) a misrepresentation; (2)  
 22 made with knowledge of its falsity (scienter); (3) with the intent to defraud, i.e., to  
 23 induce reliance; (4) which did induce reasonable reliance; (5) causing damages.” *Id.*  
 24 Plaintiff’s proposed Second Amended Complaint satisfies each of these elements. With  
 25 reference to specific statements contained in cited documents, the SAC alleges that, if  
 26 Robert Briles’s interrogatory responses are correct, (1) the Directors and shareholders  
 27 of Paul R. Briles, Inc. misrepresented and/or concealed material facts regarding Paul R.  
 28 Briles, Inc.’s ownership of trade secrets in connection with the APA on June 7, 2011,



1 May 4, 2011, September 27, 2011, and October 4, 2011, SAC ¶¶ 70-73; (2) the Directors  
2 and shareholders knew the representations were false when they made them, or did so  
3 recklessly and without regard for their truth, *id.* at ¶¶ 72-73; (3) the Directors and  
4 shareholders intended for Plaintiff to rely on these representations when Plaintiff  
5 entered into, amended, and closed on the APA, *id.*; (4) Plaintiff reasonably relied on the  
6 representations made by the Directors and shareholders, and would not have entered  
7 into, amended, or closed on the APA if it had been aware that the statements were false,  
8 *id.*; and (5) as a direct and proximate result of this intentional misrepresentation and  
9 Plaintiff's reasonable reliance thereon, Plaintiff has sustained and will continue to  
10 sustain significant harm and damages, *id.* at ¶74. Allegations at this level of  
11 particularity are more than sufficient to satisfy the Rule 9(b) pleading standard.

12 Because all Rule 15 factors favor allowing Plaintiff to amend the FAC,  
13 Defendants cannot carry their burden to oppose amendment, and Plaintiff's Motion  
14 should be granted. *See Cole*, 317 F.R.D. at 146.

### 15 CONCLUSION

16 For the foregoing reasons, Plaintiff respectfully requests that the Court (1) grant  
17 its Motion, (2) modify the scheduling order to allow for amendment of the First  
18 Amended Complaint, and (3) grant leave to file the Second Amended Complaint.  
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1 DATED: July 15, 2019

2 /s/ Matthew Donald Umhofer

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